IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 104 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME-TAX

Versus

SAYAJI IRON & ENGG CO PVT LTD.

Appearance:

1. INCOME TAX REFERENCE No. 104 of 1986

MR AKIL QURESHI for MR MANISH R BHATT for Petitioner No. 1

MR MANISH J SHAH for MR JP SHAH for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 20/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following questions have been referred for the opinion of this Court in respect of assessment year 1977-78:-

(i) "Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal has been right in law in deleting the penalty imposed by the Income Tax Officer under section 273 (c) of the I.T. Act, 1961 for late filing of the estimate under section 212 (3A) read with section 211 of the Act ?"

(ii) "Whether, the finding of the Appellate Tribunal in deleting the penalty imposed under section 273 (c) of the I.T. Act, 1961 is not based on extraneous ground and factors, since a new case was altogether made out for the first time before the Income Tax Appellate Tribunal ?"

(iii) "Whether, the Income Tax Appellate Tribunal was right in law in permitting the assessee to make out altogether a new ground for justifying the delay in late filing of the estimate under section 212 (3A) of the I.T. Act, 1961 ?"

2. We have heard Mr. Akil Qureshi learned counsel for the revenue and Mr. Manish J Shah for the respondent-assessee.

3. Though the assessee had paid the advance tax in time, only on the ground that the assessee had filed the estimate on 5th March, 1977 instead of 5th December, 1976, the Income Tax Officer initiated the penalty proceedings under section 273 (c) of the Income Tax Act, 1961 (hereinafter referred to as `the Act'). In response to the show cause notice, the assessee contended that there was no shortfall between assessed tax and advance tax paid. On the ground that the assessee had not given any valid reason for not filing the estimate and payment of advance tax in time, the I.T.O. levied the penalty of Rs.42,707/- under section 273 (c) of the Act. In appeal before the C.I.T. (Appeals), the assessee took the plea that the Officers, Directors and their relatives were busy in the Baroda Dynamite case and, therefore, there was delay of about two and half months. The C.I.T. (Appeals) found that the explanation for the delay was satisfactory and hence deleted the penalty. The Tribunal confirmed the decision of the C.I.T. (Appeals). Hence, this reference at the instance of the revenue.

4. Having heard the learned counsel for the parties, we find that since the decision of the Tribunal is based on concurrent findings of the C.I.T. (Appeals) as well as the Tribunal that there was sufficient cause for delay in filing the estimate and in paying the advance tax which was in any case done before the close of the financial year in question, the decision of the Tribunal does not give rise to any question for which the opinion of this Court would be required.

In view of the above discussion, we decline to answer the questions.

5. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J) (D.A. Mehta,J)

zgs/-